

# THE CASE

OF

## *Bankrupts and Insolvents*

CONSIDER'D.

Wherein it is shewn,

- I. That the *Most Criminal* of all *Insolvents* do not, by the Laws now in Being, meet with any Punishment.
- II. That their Creditors have no *Proper Relief*.
- III. That all other *Insolvents* are too *severely Punished*.
- IV. That the *truly Unfortunate* are most *Inhumanly* dealt with. And,
- V. That the present Method of treating *Insolvents* in general is *inconsistent* with the *Laws* of Nature, and the *Maxims* of True Policy.

Together with the Draught of a BILL for *Amending* the Law in every one of these Particulars :

- I. By *Distinguishing Insolvents* into their *Proper* and *Natural* Classes.
- II. By allotting a *Proportional* Punishment to each.
- III. By granting Mercy in a *proper Way* to the *truly Unfortunate*. And,
- IV. By giving *Relief* to the Creditors of *fraudulent Insolvents*.

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PART I.

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L O N D O N :

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To the HONOURABLE the  
REPRESENTATIVES in  
Parliament for the City  
of *London* and County  
of *Middlesex*.

GENTLEMEN,



A M too sensible of  
Your Merit, to address  
You in the usual Style  
of Dedications. My  
Motive for Dedicating  
the following Piece to You, was  
not that I might have an Oppor-  
tunity

## DEDICATION.

tunity of publishing what every Man knows better than I can express. 'Twas, because I sincerely think, that what I propose will tend to the *Encouragement of Trade and Industry*, to the *Discouragement of Luxury*, and to the *Relief of the Distressed*. And as You have the Honour to Represent the two most Rich, Flourishing and Populous Counties (I believe) in the Universe; You have therefore a greater Obligation upon You to consider seriously, and to patronize strenuously what You think may tend to produce all, or any of these Effects. You ought to have, and Your former Conduct has sufficiently convinced the World, that You really have, the *Good of Your Country*, and the *Happiness of Your Fellow-Subjects*, sincerely at Heart. This imboldened me to Address in particular to You, because, tho' I should not have the

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# DEDICATION.

Happiness of Your Approbation, I may depend on having Your Excuse.

As the late *Bankrupt-Act*, and likewise the late Act for *Relief of Insolvents*, with respect to the *Imprisonment* of their *Persons*, both *Expire* at the End of this Session of Parliament ; I took this to be a proper Season for communicating my Thoughts upon that Subject to the Publick, because the Case of *Bankrupts* and *Insolvents*, must, of Course, come under Consideration in this Session : And as You must all have a very considerable Share in whatever may be proposed upon that Head within Doors, I am persuaded You will give some little Attention to every Thing that may be offered by Those without. This makes me fondly hope, that You will peruse the few following Sheets, and,

# DEDICATION.

for the sake of the Design, I hope my Countrymen will excuse my taking up so much of Your Time, which is always chiefly employed in their Service. I am,

GENTLEMEN,

*Your Most Obedient Humble Servant,*





T H E  
C A S E  
O F  
BANKRUPTS, &c.



S the *Good of Mankind* in general is the first and chief Object of Virtue; so the *Good of our Country*, and the *Happiness* of that *Society* to which we belong; is certainly the second:

And as there is nothing tends more to the *Good of Mankind* in general, than the promoting and establishing the true Principles of Religion and Morality; and the detecting and abolishing the Absurdities of Superstition and Error; so there is nothing tends more to the *Happiness* of that *Society*

ty to which we belong, than the contriving, promoting, and establishing good and wholesome Laws, and repealing or amending those which are hurtful or deficient.

It is for this Reason, that, in all Ages; and in all Countries, great Honours have been paid to those, who were the Founders, or the eminent Lawgivers of any Society; and the *Romans*, whose Laws and Customs were in a peculiar manner formed for the Encouragement of *Virtue* and *Publick Spirit*, were so sensible of the Benefit the Society reaped from good and wholesome Laws, that, in order to incite Men to contrive and promote such, every famous Law among them bore the Name of the Man who contrived and promoted it; by which it became a sort of Monument erected to the Glory of that Man; and we find, that these Monuments have proved more durable than any of those which were formed of Marble, of Iron, or of Brass.

There is not, I believe there never was, in the World, a Society, whose Laws were so perfectly formed, as not to stand in need of some Addition or Amendment; but of all the Societies I ever heard of, I think I may say, there never was one whose Laws were founded upon better Principles, than the Laws of this Country generally are. The Body of the *English*  
Law

Law is of such an excellent Constitution, that it cannot well be destroyed or entirely corrupted, even by those *Quacks* and *Empyricks*, who study the Practical, but never mind the Rational Part of the Law; for when any Malady occurs, when any Deficiency is discovered, a Man who has rightly studied the Laws of this Country, may from the Law it self find an easy Remedy.

I have long thought, and it seems now to be the general Opinion, that no Part of our Law wants an Amendment more than that which relates to *Bankrupts* and *Insolvents*. I have long had in View the Scheme for an Amendment, which I now lay before the Publick. I have, I say, had it long in View; but I knew the Influence of old Customs, and how difficult a Matter it was to persuade People, to alter or abolish any Custom which had been long established, and generally approved. I knew, that the Prejudice of Education was of so prevalent a Nature, that a Man must have great Strength of Judgment to discover the Folly of an old Custom, and a great deal of Resolution, as well as *Publick Spirit*, to dare to patronize an Amendment or Alteration. As I had the good Fortune to be concerned in some Affairs in which the present Lord High Chancellor was employed as Council, I from thence soon perceived, that his Judgment

was



was much superior to the Influence of any old Custom; and that he was not to be guided in any thing by the *Prejudice* of *Education*, but by the *Light* of his own *Understanding*. This convinced me, that my Scheme would by him be fairly try'd; and if he approv'd of it, I saw he had Resolution and Publick Spirit enough to countenance it. For this Reason, I waited till I should see him in that High Office, which I then foresaw he would soon arrive at, and which he now not only fills, but dignifies: An Office for which he was pointed out by the publick Voice of the Nation, even before His Majesty was pleased to declare his gracious Intention. So that in this it may be said, His Majesty only confirmed what had before been given by the general Voice of the People: *A Rule which will always be observ'd by every wise King; for a King ought to have no Favourites but such as are the Favourites of his People.*

In the Scheme I am now to propose, the *Relief* of the *injured Creditors*, as well as the *Distressed Debtors*, is what I have principally in View. *That the Injured shall have all possible Satisfaction: That the Guilty shall not escape Punishment: That the Innocent and Unfortunate shall not be oppressed*, are Considerations worthy of a *British Senate*; and if I can contribute to any of these Three Great  
Ends,



Ends, I shall meet with *that Reward*, which no Man can give me, which no Man can take from me, *The Satisfaction of having contributed to the Good of Mankind, to the Happiness of my Country.* But, as no Man ought to propose an Amendment, till he has shewn the Defects of the Laws in Being, I think my self obliged to shew some of the many Defects in those relating to *Bankrupts and Insolvents*, before I offer my Amendment. For which Purpose, I must beg Leave to examine a little into the fundamental Principles or Maxims of Society; because the only right Method of examining any Branch of a Municipal Law, is to trace it up to its Original in Nature, in order from thence, or from History, to give the Reason of every particular Statute, or Custom, relating to that Subject. This is the only scientifick Method of studying the Laws of any Country; and, in this Method, the Study of the Laws of *England* would be easy and agreeable; nay, more easy and agreeable than the Study of any other Municipal Law I know, instead of being so rugged, perplexed, and tedious, as it is in the *Ridiculous Common-place*, or rather *Cobler Method*, which is now practised.

In the following Treatise, therefore, my Method shall be, 1st, To examine some of the Fundamental Rules of Society. 2dly, To shew from thence what I take  
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to be Defects in our present Laws and Customs relating to *Bankrupts* and *Insolvents*. 3dly, I shall give the Amendment I propose, by way of a Bill for that Purpose: Not that I am so vain as to imagine, that this Bill is to be any Rule for those who may be appointed (if any should) by either House of Parliament, to draw up a Bill for the Amendment of the Law in this Particular; but because I think it is the most proper and methodical Way of making my Readers comprehend what I propose: And for their further Assistance in this Respect, I shall make some short Observations on the most material Sections of the Bill, and I shall wind up the whole with some general Observations.

Self-Preservation is an indelible Law, which God Almighty has planted in the Mind of every Animal; and for the Enforcing of this Law, every Animal is endowed with Appetites, Passions, or Affections, which rouse it up to Action upon all Occasions. The extraordinary Wisdom of the Creator, in proportioning these Appetites, Passions, or Affections, to the particular Nature or Frame of every Species of Animals, would be a Subject worthy the Enquiry of some of the *greatest Men of our Church*: A Subject much more worthy their Labour and Study than most of those about which they are generally employ'd; and it would furnish a Proof of  
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the Existence of a Supreme, Intellectual, and Wise Being, more universally convincing than any they can draw from Revelation: But I shall take notice only of such of these Appetites, Passions, and Affections, as immediately relate to my present Subject.

As some sort of Food or Sustenance is necessary for every Animal we know, so every Animal is endowed with an Appetite, call'd Hunger, by which it feels a Pain in the Want, and a Pleasure in the Receiving of what Nature calls for. This Appetite obliges every Animal to be often at great Pains and Labour to procure that Sustenance; but as Mankind, and likewise some other Animals, have more Sagacity and Foresight than others, they consider, or have at least a Presentiment, that at some Seasons, or upon some Emergencies, it may not be in their Power to procure that Sustenance or Convenience they may then stand in need of, and therefore they provide beforehand for what they think they may afterwards have Occasion for. *This is the Foundation of Property.*

Likewise for the sake of Self-Preservation, Mankind, and indeed most other Kinds of Animals, are endowed with the Passions or Affections of the Mind, which we call *Fear, Courage, and Revenge.* These three Affections, I say, almost all Animals are endowed with, in different Degrees,



Degrees, according to their several Natures. And it is very surprising to observe, how justly the Quantity of each of these Affections, allotted to each Species of Animals, is proportion'd to the Means for Offence or Defence, with which that Species of Animals is by Nature provided, and the Occasions it may, by its Nature, probably have, either for the one or the other. By the first of these Passions we are incited to fly from or avoid those Dangers which we think we ought not in Prudence, or in Duty, to encounter. By the Second we are prompted to encounter Dangers with Resolution and Alacrity, by which we are enabl'd to defend both our Persons and our Properties against any Injury that may be offered; to retort the Injury upon the Aggressor, and to call for and insist upon Restitution or Reparation, where any Part of our Property has been taken from us, or any other Injury done to us. And by the Third we are prompted to return Injury for Injury, or rather, more properly, to punish, or to take Vengeance of the Creature that has done us an Injury, by which the Passion of Fear is raised in that Creature, and in every other Creature that knows any thing of our Nature, whereby they are kept in 'Awe, and terrify'd from doing us any future Injury. *The Law of Self-Preservation, supported and enforc'd by Courage, is the*  
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*Foundation of that Right, which every Man has to Self-Defence, Restitution, and Reparation; and the Law of Self-Preservation enforced by the Passion of Revenge, is the Foundation of that Right which every Man has to punish any other Man who does him an Injury.*

But as the Passion of Revenge might be of pernicious Consequence, if it were not some way tempered and moderated, therefore the wise Author of Nature has endowed many Animals, but particularly Mankind, with a Passion or Affection, which incites us to forgive the Creature that has injur'd us, upon its Submission, and making all the Attonement that lies in its Power, *which Affection is the Foundation of what we call Mercy.*

Mankind have the Sagacity to discover, that Two, Three, or more of them, uniting together, may be better able to defend the Person and Property of every Individual, than any of them could do separately; and likewise, that, by mutually assisting one another, they may better provide for the Support and Convenience of Life, than any one can do by himself alone; from whence they naturally draw this Consequence, *That all Covenants, Engagements, and Promises they make to, or with one another, ought to be punctually performed;* and by this a new sort of Property is introduced, for every Man has  
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a sort of Property in the Promise or ~~C~~ovenant another makes to or with him ; and if that other does not perform his Promise or Covenant, he thereby injures him in his Property. The first sort of Property the Civilians call *Jus in Re*, and this last they call *Jus ad Rem*. *This is the Foundation of Society and Commerce*. And if it were necessary, I could shew, that Mankind are endowed with several Affections, which necessarily lead them into Society, and which are paramount to all those Affections they are endowed with, for the sake of Self-Preservation ; and consequently fully evince the Ridiculousness of that Notion, *That the State of Mankind, by Nature, is a State of War* ; but this is foreign to my present Subject.

In the forming a Society, it must immediately appear, that no Union could be long kept up amongst the several Members of that Society, unless every Individual should agree to submit all the Controversies and Quarrels he might have with any other of the same Society, to be decided by some one, or some certain Number, of the Members of that Society, chosen or appointed for that Purpose by all the rest ; and that this Submission should be absolute in all Cases, where it could possibly take Place. We must therefore now briefly examine, how far this Sub-  
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mission can take Place in all Cases relating to Property, Self-Defence, Restitution, Reparation, Punishment, and Mercy.

As to Property, it is evident, it is allowed by all Mankind, *That whatever any particular Man has by his Labour and Industry provided for his own future Support or Convenience, ought not to be taken from him without his Consent*: But as Disputes may and do often arise about the Property of a Thing, that is, it often happens, that two Men claim the Property of one and the same thing; and as in all such Cases, the absolute Submission above mentioned may take Place, therefore, in all Societies, it has been established as a Maxim, That wherever a Dispute of this Nature happens, neither Party shall violently take hold of the Thing; but whoever was Possessor when the Dispute commenced, shall retain the Possession; or, that the Thing in Dispute shall be sequestered, till the Dispute be determin'd by those whom the Society have appointed for that Purpose. This, in Matters of Property, is a general Rule; and it is necessary it should be so, otherwise Right would be obliged to yield to Power, and the strongest Party would always determine the Dispute in his own Favour: Nay, if the two Parties had great Interest in the Society, it might engage the whole



in a Civil War, and make the Society itself an easy Prey to a Foreign Invader.

But in Cases of Self-Defence, either with Respect to our Persons or Estates, it is otherwise. Here Attacks or Invasions may be so suddenly made, that the Party assaulted or invaded has not Time to call the publick Arm to his Assistance or Defence; and therefore, he is allowed to use what Means he may think necessary for repelling Force by Force, in Defence of his Person or Property; yet so as not to exceed the Bounds of Self-Defence, by launching into that, which is properly call'd *Revenge*. Indeed, if a Man is not actually assaulted or invaded, but thinks he has Reason to be afraid of it, here he may submit the Reasons of his Jealousies and Fears to the Society, and may be protected by them; and therefore he is not allowed to use all such Means as he may think necessary for his own Safety or Defence, but is oblig'd to apply to the Society, or the Persons appointed by them, who are to examine into the Grounds of his Fear, and to grant him such Safeguards, as they think proper, or such as are provided by the Laws of the Society. *Upon this Principle are founded our Customs relating to the Binding of Persons to the Peace, or to good Behaviour.*

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It is also evident, That when any Part of a Man's Property is taken from him, it ought to be restored ; when any Promise or Engagement is for a valuable Consideration made to any one Man by another, it ought to be perform'd: For this Reason every Man has a *Right to insist upon the Restitution of his Property*, and also upon the *Performance of Promises and Engagements* so made to him, which is a Sort of Restitution, and therefore I shall for the future suppose it comprehended under that general Name. In all such Cases, the *absolute Submission* upon which Society is founded may take Place ; for which Reason, if a Man has either by Violence, by Fraud, or by Accident lost the Possession of his Goods, he is not by Violence to take them from the Person who has got them into his Possession ; or if another Man refuses to perform the Promises or Engagements made to him, he is not by Violence, or by his own private Power, to pretend to force that other Man to a Performance ; but he is to apply to the Persons appointed by the Society for that Purpose, who are to determine any Dispute there may be in that Affair, and are by publick Authority to command and enforce Restitution. Indeed, where it appears that the Possessor got hold of the Possession by Violence or Fraud, he is not to retain the Possession, even tho'

he lays claim to the Property; in such a Case, the publick Magistrate ought first to order the Possession to be restored to him from whom it was violently or fraudulently taken away, and then proceed to determine the Dispute about the Property; and for restoring the Possession in such Cases, the *Romans* had a particular sort of Summary Action or Proceeding, which they called *Interdictum*. There is, 'tis true, one Case which looks something like Restitution by private Authority, but is really a sort of Self-Defence; and that is, when a Man's Goods are taken from him, if he can immediately pursue, he may, and may take his Goods back by Violence, which is what is usually called a *Fresh Pursuit*, and is allowed of in all Societies, because it may often happen, that the Person robbed or dispossessed, could not obtain any Restitution by applying to the Society.

And it is likewise evident, that where the Thing taken away cannot be specifically restored, by the Person who took it, or where a Promise or Engagement cannot be specifically perform'd, by the Person who made such Promise, or enter'd into such Engagement, the Person failing to make Restitution, or to perform specifically, ought to give or perform an Equivalent; especially if his failure was occasioned by any Crimes, by any Fault, or by any Neglect of his own. This is called *Reparation*,  
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*tion*, which likewise takes Place in all Cases where one Man is hurt or injur'd in his Person, or his Fame, by the Crime, the Fault, or the Neglect of another ; but as the two Parties concerned may very probably differ about the *Quality* or *Quantum* of this *Reparation*; and as in all Cases this Dispute may be determined by a third Person ; therefore, every Man ought to *submit* all such Disputes to the Society ; and in all such Cases this *Submission* must be absolute : For if the Parties themselves were in any Case left to determine any Quarrel about it, the Consequence would be the same as in the Case of Disputes about Property.

If the Man who injures another in his Person, his Fame, or his Estate, can neither make *Restitution*, nor a full *Reparation*, then the Person injur'd is by the Law of Nature *entitled* to *Revenge* ; That is, he is entitled, and has a Right to punish the Person that injur'd him, in order to raise that Passion called *Fear*, and thereby to terrify others, as well as the Person who did the Injury, from being guilty of the like Crimes, Faults, or Negligences against him in any time to come : But as *Submission*, upon which Society depends, may here in every Case *absolutely* and *fully* take Place ; it is therefore certain that all *private Revenge* ought to be *sunk* in the *Publick* : Nay, as *Revenge*, when *private-*



*ly indulged*, is one of the most pernicious Passions that reigns in the human Breast, it ought by the Laws and Regulations of every Society to be *discouraged* as much as possible ; no Man ought in any Case to be allowed to *indulge* his *private Revenge* against his Fellow-Subject. We are obliged not only by the Laws of Society, but by the Rules of Christianity, to leave all Revenge to God, and to his Vicegerents on Earth, the Magistrates of the Society to which we belong : And therefore it must be wrong in any Man to revenge himself upon his Fellow-Subject ; it must be wrong in any Society to permit it. From whence must appear evident, that by the Laws of Nature it is the Society only, to which the Person injur'd belongs, that has a Right to revenge the Injury : It is the *Society* that has a *Right*, not only to *determine* what *Punishment* is due, but likewise to *inflict* that *Punishment* which they shall determine to be due for the Offence committed.

The Party injur'd has, 'tis true, a Right to revenge, he has a Right to see a Punishment inflicted ; nay, in atrocious Cases he ought, for the Good of Society, to insist upon it ; but then, in all Cases, he ought to sue for it *according to Law* ; and by the Laws of every well regulated Society there ought to be a *legal Method* established for bringing every Offender to condign Punishment, if the Offence be but in  
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the least Degree atrocious; for in any Case where such a *legal Method* is not established, private Men will be apt to take Revenge at their own Hands, which must always be extremely dangerous and inconvenient for the Society.

In every human Mind the Passion call'd Revenge is, as I have said, tempered and moderated by that *contrary Passion* call'd *Mercy*; and as every Man has a Right to seek Revenge *in a legal Way*, when he is injur'd; so every Man, so far as it Regards himself, has a Right to grant Mercy; but then it is to be considered, that when any Member of a Society is injur'd, the Society as well as he receives an Injury, and from thence the Society has a Right to punish, especially if the Offence be in the least atrocious; the Party injured may wave and give up that Reparation which he only is entitled to, but he cannot, nor ought it to be left entirely in his Power to shew Mercy, and to pass from all Punishment. This, as well as the Determining and Inflicting the Punishment is, and always ought to be *submitted* entirely to the *Society*; because the *Good-Nature* of a private Man, perhaps his *vain Glory*, may prevail with him to grant Mercy *unseasonably*, or his Revenge may prompt him to refuse Mercy, perhaps to an *Object* of the *greatest* Compassion.

As the Determining and Inflicting Punishments, and likewise the Granting of Mercy, belongs solely to the Society; therefore it is the proper Business of the Law-Givers of every Society, or of the Magistrates where the Laws are deficient, to *Proportion* in all Cases the *Severity* of the Punishment to the *Heinousness* of the Offence; and never to grant Mercy but when it can be done without an Inconvenience to the Publick, without any Injustice to the Party injured. As to the Granting of Mercy, it is impossible to make standing Laws for its Regulation; but as to Punishments they may be in most Cases regulated by the standing Laws of every Society; and in this respect great Care should be taken to observe *a due Proportion*; for if the Punishment be too small for the Offence, it is an Injury to the Person offended, because he is by Nature entitled to such a Revenge or Punishment as is necessary for his Protection and Self-Preservation against such Offences for the future: It is also an Injury to the Publick, and to every Man of the Society, because it encourages others to be guilty of the same Offences, or at least does not sufficiently deter them from the Committing of any such: And if the Punishment be too severe, it is not only a Cruelty and Injustice towards the Person so punish'd; but it is an Injury to the Society, because it

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is using one of the Members of that Society in a more cruel Manner than he deserves. Therefore, wherever there appears to be a *Disproportion* in this Respect, the Want of Endeavour to rectify it, is an *unpardonable Neglect* in those who have a Share in the Legislative Power of their Country: It is an Offence against Mankind in general; it is an Offence against the Society to which they belong in particular, and upon *their Heads* are *properly* to be charged all the *Injustice*, all the *Cruelties* that shall ensue for want of such an Amendment.

As to the Principles of Society before mentioned, which relate to Property, to Self-defence, or to Restitution, they require no farther Consideration with Regard to the present Subject, but as to those which relate to *Reparation*, *Punishment* and *Mercy*, they must be a little more particularly considered.

As I have said, when a Man, by his Crime, his Fault, or his Neglect, has injured another in his Person or Fame; or when, by his Crime, his Fault, or his Neglect, he has injured another in his Property, and cannot specifically restore or perform; he is obliged to make Reparation, and the *Quantum* of this Reparation is generally computed from the Damage or Loss which the Person injur'd has sustained. If this Injury or Damage  
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was occasioned by the Crime of another, the Guilty Person ought not only to make good the Damage to the Party injur'd, but the Publick ought to inflict a proper Punishment to terrify others from being Guilty of such Crimes against any of the Members of that Society. If the Damage was occasioned by the Fault or Neglect of another, the Party offending ought to make full Reparation to the Party injured, and if he can do so, there is seldom or ever an Occasion for any farther Punishment; but if he cannot make good the Damage which the other has sustained through his Fault or Neglect, some kind of Punishment, or rather Correction, ought then to take Place, as a Warning not only to the Person then offending, but to all others, to be more careful and circumspect for the future; some sort of Punishment, I say, becomes necessary; but as all kinds of *Revenge* and *Punishment* belong to, and ought to be *determined and inflicted* by the *Society only*, therefore the *Quality* and *Quantum* of this *Punishment*, to be inflicted on such Offender, ought in all Cases to be *determined* either by the *standing Laws* of the Society, or by the *Sentence* of the *Judge* appointed by the Society for that Purpose; and in either Case, particular Care ought to be taken, to *proportion* the Punishment, as *exactly* as possible,



possible, to the *Grossness* or *Levity* of the Fault or Neglect.

A Man may be injur'd not only by the Crime, the Fault, or the Neglect of another; but likewise he may be injured, that is, he may sustain a Damage or Loss by the *Misfortune* of another: As for Example, if a Man should have the Misfortune to fall from the Top of a House, and by falling upon another Man, should break that other's Back, his Arm, or his Leg, and thereby save his own Life, which probably indeed would be the Consequence: In this Case it must be granted that the Man who thus occasioned a Damage to another, ought not to be subjected to a Punishment, even tho' he should not be able to make any Reparation or Amends to the Person hurt by his Fall: I believe he would not, by the Laws of any Society, be obliged to make any Reparation, even tho' it were in his Power; yet it is certain, that in *Honour* and *Conscience*, he would be obliged to do all he could to make an Amends, or at least some Gratification, for what the other Man had suffered, by an Accident which preserv'd his Life.

Some of my Readers may perhaps be surpris'd at my being so particular in explaining Maxims and Truths, which are known to every Man of common Understanding; but they will, I believe, be more surpris'd, when I shall hereafter shew them,  
that

that our *present Laws*; relating to Bankrupts and Insolvents, *offend* against all those of the abovementioned Maxims or fundamental Rules of Society, to which they can possibly have any Manner of Relation; and as to those Maxims to which they can bear no Relation, I was obliged to mention them in order to introduce the others.

Now to my Subject: All manner of Bankrupts and Insolvents are naturally to be considered as Persons who have done Injuries to others, who have occasioned a Damage or Loss, and can neither make *Restitution*, nor a *full Reparation*. And from hence it appears, that according to the *Laws of Nature*, they ought to be distinguished into four Classes or Divisions: To wit, Those who have occasioned a Damage or Loss by their Crimes: Those who have occasioned a Damage or Loss by having committed some culpable Action: Those who have occasioned a Damage or Loss by some Negligence or Omission. And lastly, Those who have occasioned a Damage or Loss by their Misfortunes. This, I say, is the *natural Division* of Insolvents; and therefore, by every just Municipal Law, they ought to be ranked according to this Method; otherwise, it will for ever be impossible to do Justice to the Publick, or to their Creditors, without being cruel  
and

and barbarous to some of them ! And as there is no Law in the World better suited for *ranking* them in a *proper Manner*, than the Law of *England* is, I am surprised it has not been done long before this Time. Let us consider the four Classes separately, and in Order : And,

*First*, As to those Insolvents, who by their Crimes have occasioned a Damage or Loss to others, for which they cannot, or at least pretend that they cannot, make a full Reparation ; it is certain, that they are all *obliged* to make a full Reparation as soon as it shall be in their Power ; and this they ought not only to be forced to do by Law ; but to prevent others from being guilty of the like Crimes, even tho' they could make a full Reparation, they ought all to be subjected to some Punishment, and this Punishment ought to be *proportion'd* as near as possible to the Nature of their Crimes, and the Quantity of Reparation they are able to make to their Creditors.

Of this sort of Insolvents, those are the most criminal, who, after having contracted large Debts, *secrete* their Estate and Effects from their Creditors, and run beyond Seas, or into a Jail, with a Design never to make any Satisfaction to their Creditors, but to live beyond Seas, or to live idly within the Rules of a Prison, the remaining Part of their Lives, in order to  
*spend*



*Spend* in *Luxury* what they have got by *Robbery*; or to leave Fortunes to their Children, Relations, or Friends, out of what they have stoln, *according to Law*, from their Creditors.

These, I say, are the most criminal; they highly deserve that Punishment, which, by a late Law, is inflicted upon fraudulent Bankrupts: They deserve all to be hang'd. And why this Punishment should be confined to Merchants and Dealers, I cannot comprehend: But such is our Law at present, that a Man who is not within the Statutes of Bankruptcy, and who can by Fraud, or otherwise, get a good deal of other People's Money and Effects into his Hands, may easily convey and settle his Estate in such a Manner, that the Creditors cannot, *by Law*, come at any Part of it: He then may retire within the Rules of a Prison; he may have his *Winter Lodging* within the Rules of the *Fleet*; he may have his *Summer Lodging* within the Rules of the *King's Bench*; he may live *luxuriously* and *magnificently* in both; he may appear *openly* and *avowedly* in every Part of the Town *in Term Time*; he may almost, whenever he pleases, take a Jaunt to the Country, or a Trip to *France* for his *Diversion*, and laugh at his just Creditors, who have taken all the Methods that the Law, *as it now stands*, can admit of, for obtaining Payment.

ment. Is not this monstrous? Is it to be permitted in any Country in whose Councils it is pretended, that Justice and Equity preside? Yet such a Criminal, in the Enjoyment of this *Criminal Wealth*, is *protected* by our Laws; for if any Creditor, whose Family was perhaps starving for want of that which the Debtor was spending in Luxury and Debauch, should catch hold of him, and hang him up upon the next Sign-Post, as he would justly deserve, the poor Creditor would be hang'd up at *Tyburn*, as a *Publick Criminal*, for the Murder of one of His Majesty's *Liege Subjects*. While so much Liberty, and so much Convenience are allowed to such Criminals in Jail, can it be said, can it be so much as pretended, that Imprisonment is any Punishment? And yet, by our Laws, they are subject to none other. So that, as the Law stands *at present*, the most criminal of all Insolvents are so far from being subjected to any Punishment, that they cannot be compelled to make even that Reparation which is every Day in their Power.

The next sort of criminal Insolvents are those who, without any probable View or Expectation of better Circumstances, or of receiving speedily any large Sum of Money, or Estate, spend *idly* or *extravagantly* more than their Income can admit of, and by Pretences, which they know to be

be false and fraudulent, procure more than they can have any probable View of repaying. Such Insolvents are really common Cheats; and tho', by some extraordinary Accident, they should afterwards come to have it in their Power, and should make full Reparation to their Creditors, yet they ought to be punished, in order to deter others from the like Practices. But I cannot think that Imprisonment is a proper Punishment; for if they have reserved sufficient to maintain themselves in Jail, and to purchase the Rules, or even the Masters Side, Imprisonment is then a Punishment no way adequate to their Crimes. On the other hand, if they have reserved nothing, but are reduced to the Necessity of living in the Common Side, upon the Jail Allowance, I shall hereafter shew, that such an Imprisonment is a Punishment too severe for any Criminal, in a Country whose Laws do not, in any Case, admit of Torture. These are the only two Cases I can think of, where an Insolvent can be properly said to be a Criminal; and it appears evident, that the *first Principles of Society*, with respect to *Reparation* and *Punishment*, are not observed in either.

The next Class of Insolvents are those who, by some *culpable* Action, or Manner of Acting, have occasioned a Damage or Loss to others, for which they cannot  
make



make a *full Reparation*: Under this Class I comprehend those Insolvents who without knowing their Circumstances, or by depending upon alluring and probable Hopes, run themselves in Debt by Extravagance or Idleness. Such Insolvents are certainly highly *culpable*, but it cannot be said that they are *Criminal*, because they never had any fraudulent or wicked Intention; and therefore if they could make full Reparation, it is certain they ought to do it, and it is as certain they ought not then to be punish'd; but as they cannot make a full Reparation, they ought to be subjected to some sort of *Punishment* or *Correction*, as a Terror to others, and in Justice to those who have been injur'd by their Fault.

The Third Class of Insolvents are those who by some *Negligence* or *Omission* only, have occasioned a Damage or Loss to others, for which they cannot make a full Reparation: Under which I comprehend all those who, by the *Indolence* of their Nature, or led away by Company and Diversion, *neglect* their Business, allow themselves to be cheated by Servants and others they employ, and at last, without ever looking into their Affairs, run themselves into more Debt than they are able to pay. Such Men are so far from being *Criminal*, that they really deserve in some Measure to be *pitied*. However, they are

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certainly obliged to make full Reparation and if they cannot, they ought to be some way *punish'd* or *corrected*, in order to be a Terror to others, and to rouse up the Attention and Application of those who are deviating, or who are by their Natures prone to fall into the same Road to Destruction. And,

The Fourth Class of Insolvents are those who by real *Misfortunes* and *Disappointments*, and without any Crime, Extravagance or Negligence in their own Conduct, occasion a Damage or Loss to other Men, for which they cannot make a full Reparation. Under this Class I comprehend those who suffer by *Misfortunes incident* to their Trade or Business; such as ill Success in their Projects of Trade, Losses by Sea, by Fire, or by bad Debts, &c. those who suffer by being *Security* or *Bail* for others, or by such like Misfortunes; and finally, those who have no Estate *sufficient* for their *present Subsistence*, but have *reasonable* and *probable* Hopes of soon getting an Estate, an Employment, or the like, and contract no Debt, nor spend any more than what is *absolutely* necessary for their *immediate Subsistence*, according to the Character their Expectations oblige them to support; yet at last meet with a *Disappointment*, and by that Disappointment are rendered incapable of paying what they have been *necessarily* obliged to contract.

tract. All such Insolvents are obliged, in *Honour* and *Conscience*, to make full Reparation; that is, to pay the Whole of their Debts, as soon as they have it in their Power, unless the Creditors knew of the *Risque* they run, and had a *Premium* or *Price* allowed them for that *Risque*. But surely no such Insolvent can be esteem'd either *Criminal* or *Culpable*. On the contrary, they are *Real Objects* of Compassion; and it is most *barbarous* to leave it in the Power of a *splenetic*, or *vengeful Creditor*, to add to their Misfortunes, by throwing them into a Jail, where they must be in great Danger of Starving.

These are the Distinctions which by the *Laws of Nature* ought to be established, with regard to Insolvents; and it must be evident to every Man, that they ought to meet with very different Kinds of Treatment. Yet, by our Laws, all Insolvents are confounded, without regard to the Causes of their Insolvency, or any Difference, in the main, as to the Punishment. The Punishment inflicted upon all promiscuously, is Perpetual Imprisonment, without any Mean of Subsistence, *provided by Law*, but the Jail Allowance, except in one particular Case, by a late Statute very *generally* and very *lamely* provided for. Mercy may indeed be dispensed, but by whom? Not *by the Law*, not *by the Civil Magistrate*, after a proper Enquiry into the *Character* and *Circumstances* of the



Person suing for Mercy; but *by the Creditor*, according to the *Disposition* he may then happen to be in, or the *particular Whim* he may afterwards take. In all Cases, it is left *by Law* entirely in the Power of the Creditors; nay, in most Cases, in the Power of *every one* of the Creditors *separately*, to grant Mercy with regard to himself singly to the greatest Offender, or to refuse Mercy to the greatest Object of Compassion. And what adds to the Hardship in this last Case is, that generally the Refusal of *any one* is an effectual Bar to that Mercy which perhaps *all the rest* are willing to grant. So that, with respect to Bankrupts and Insolvents, our Laws are contrary to what ought to be the *fundamental Maxims* of every Society, both as to the *Proportioning* of Punishments, and the *Dispensing* of Mercy.

'Tis true, by our Laws, with respect to some particular Provisions, there is a sort of Distinction established between Insolvents, but it is a Distinction that is neither founded in *Nature* nor *Reason*: However, I must now consider it a little, and shall hereafter take some farther notice of it. Insolvents then are by our Laws distinguished into, First, those who are called Bankrupts, that is to say, those who are Subject to the Statutes of Bankruptcy. Secondly, Those who are not subject to any such Statutes, nor charg'd in Execution  
with

With above 100 *l.* and Thirdly, Those who are not subject to the Statutes of Bankruptcy, but are charg'd in Execution with above 100 *l.*

As to those who are subject to the Statutes of Bankruptcy, every one of them is obliged by Law to discover and surrender to his Creditors *all he has in the World*, and if he be *detected* in making any *fraudulent Concealment*, he is to be *hang'd*; yet after he is thus by Law obliged to *divest* himself of *all* he has in the World, he is by Law left *entirely* to the *Mercy* of his Creditors, without any Distinction or Regard to the Causes of his Bankruptcy. The honestest, most unfortunate Man that ever was in the World, may happen to starve *by slow Degrees*, even to Death, in a noisome Jail, and, possibly, in Company with the most Profligate of the human Race, if he happens to have *merciless Creditors*; nay, sometimes, if he happens to have but one *Revengeful Creditor*, to whom he owes a large Sum: But as to all other Insolvents, they cannot any way by Law be compell'd, either to discover or surrender *one Shilling* of their Estates to their Creditors. If they are inclin'd to act a fraudulent and criminal Part, they may *by Law* do so; that is, they are not *by Law* subjected to any greater Punishment, than if they were to act honestly and fairly, by surrendering all

they have to their Creditors. On the contrary, they may very probably render their Condition *much worse*; because, if *every one* of the Creditors do not then join in granting Mercy, their Punishment becomes much *more severe*. So that all other Insolvents have not only a *Privilege*, but they have by *Law a Temptation* to act a *roguish Part*. In this Case, therefore, it must be allowed, that the Bankrupts are the most hardly dealt with; but then, as to the dispensing of Mercy, they have by Law some little Advantage; for, if Four Fifths in Number and Value, of their Creditors, who have proved their Debts under the Commission, consent to the Certificate, the Bankrupt must then be not only discharged from Jail, but likewise from his Debts, in case the Dividend amounts to 15 s. in the Pound. That is to say, Four Fifths of the Creditors may *oblige*, or rather *force* the other Fifth, not only to shew Mercy to the Bankrupt, but to grant him a *general Release*, even tho' he has been the *most extravagant*, prodigal Creature in the World; nay, even tho' there may be great *Suspicion* of his being a *Criminal*.

As to those who are not subject to the Statutes of Bankruptcy, nor charg'd in Execution with more than 100 l. they are all *promiscuously*, and without *any Regard* to the *Causes* of their Insolvency, subjected  
to



to *Perpetual Imprisonment*; but then, if any one of them be willing to surrender all he has to his Creditors, he must, by a late Statute, be discharged, or otherwise, the Creditor refusing to discharge him, must pay him a Groat a Day for his Subsistence in Jail: That is to say, *a malicious Creditor*, at the Expence of less than Six Guineas *per Annum*, may satisfy his Revenge, so far as to keep *a poor unfortunate Man* in Jail for his Life; and that, after he has surrendered *all he has* in the World to his Creditors, and thereby *stript* himself of *every Mean* of Subsistence, but that *scanty Allowance* of a Groat a Day.

Thirdly, As to those Insolvents who are not subject to the Laws of Bankruptcy, but are charged in Execution with above 100 *l.* they likewise are *promiscuously* subjected to the Punishment of *Perpetual Imprisonment*, without any Regard to their being criminal, culpable, negligent, or unfortunate Insolvents; and that without any *Legal* Subsistence, but the Jail Allowance. So that such an Insolvent, tho' he has really become so, *purely* by Misfortunes; and tho' he be willing to surrender *all he has* to his Creditors as *honestly* and *fairly* as any Bankrupt, or other sort of Insolvent; yet he may be debarred from Mercy by *any one* Creditor to whom he owes 100 *l.* Debt and Costs; or by *any one* of the most *insignificant* of his Creditors,

who resolves to pay him a Groat a Day: Nay, there is a Way to disappoint him, even of this Groat a Day; for if the Creditor be *very malicious*, he may run up the smallest Debt to above 100 *l.* before he charges his Debtor in Execution: And there is no accounting for the Tempers of some Men, nor answering for what they may do, when it is in their Power to give their *Revenge its full Swing*. How often Creditors have been disappointed of ever receiving any Payment, by the *Obstinacy*, or rather *Cruelty* and *Malice* of one, even in Cases where they might otherwise have had a good Chance for receiving full Satisfaction, I believe almost every Man, from his own Experience, may judge. I am sure, all those who have had the Misfortune of being conversant with the distressed Part of Mankind, can shew Instances of it.

But, in both these last Cases, if an Insolvent has a Mind to act *a real criminal Part*, and to live within the Rules of a Prison upon what he has *withdrawn* and *concealed* from his Creditors, he may do so; and may live *very comfortably*: There is no Way yet established *by Law*, for *compelling* him to make a Surrender. Imprisonment is the only Punishment can be inflicted upon the most criminal of either of these Sorts of Insolvents; so that, in this Case, the Creditors are really *with-*  
*out*

out any Remedy, which is a most surprising Defect in our Law.

Having now shewn how Insolvents ought to be distinguished by the *Laws of Nature*, and how they are distinguished by the *Laws of England*, I shall next briefly consider the Punishments that ought to be inflicted upon them by the Laws of Nature, and the Punishment that is inflicted upon them by the Laws of *England*. As to the first sort of criminal Insolvents, according to their natural Distinction, it is certain *they ought to be hang'd*, if ever a Thief or a Highwayman deserved any such Punishment; for, to run in Debt, and then to run away, either beyond Seas, or into a Jail, with that Money which ought to pay that Debt, with an Intent to *defraud the Creditors*, and to make a Fortune or a Livelihood out of what ought to be applied to the Payment of them, is not only a Robbery, but a Robbery of the *deepest Dye*: It is a *Robbery under Trust*, and is as much more heinous than any other Robbery, as a Murder under Trust is more heinous than any other Murder. And as to the other sort of criminal Insolvents above described, to whom I think we now generally give the Name of *Sharpers*, they certainly ought to be look'd on as *common Cheats*, and therefore ought to be *Pillory'd*, where they would probably meet  
with



with a Punishment pretty well *proportion'd* to the Multitude, or the Heinousness of their Offences.

As to the other Three Classes of Insolvents, before I consider the Punishments which ought to be inflicted upon any of them, I must take Notice of a Maxim of the *Roman Law*, which says; *That every Man ought to know the Person with whom he deals, or to whom he gives Credit*; for as this is a Maxim of Reason, as well as of the *Roman Law*, it certainly *alleviates* the Offence of every one who is not a criminal Insolvent with respect to the Creditor or Person offended; because their Insolvency is always owing to their Tempers and Dispositions, or to the Nature of the Business they deal in; and as the Creditor ought to know the Man he gives Credit to, if he gives Credit to an *Idle*, an *Extravagant*, an *Indolent*, or an *Easy Good-natur'd Man*, or to one who *deals in hazardous Affairs*, or who depends upon *Contingencies*, the Creditor himself is either to be blamed, or it is to be supposed, that he had a *Premium*, or was to have a *Consideration* for the *Risque* he run; and therefore he cannot, in Justice, insist on so severe a Punishment, as otherwise he might. This being premised, I shall next observe, that the *Extravagant* and the *Idle* Insolvents will generally, in my Opinion, find sufficient Correction, in  
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being stript of all they have in the World; and obliged to work hard for their daily Bread. However, as the Idle and Extravagant *really deserve* Punishment; and as they are often made so by the *many Temptations* this Great and Opulent City or Kingdom affords, it would be very proper, by way of Punishment, to remove them to some Place where they could not meet with *so many Temptations*, and where they might very probably make *good and useful Subjects*. And, as to those who become Insolvent thro' *Good-nature*, mere *Indolence*, or *Negligence*, without any thing of Extravagance, their being stript of all they had to subsist on, would immediately bring them into *Necessity*, and that *Necessity* would make them *Industrious*; by which Means, they might very probably become afterwards *useful Members* of the Society, even at home, and might, by Degrees, be able to pay all their former Debts.

As to those who become Insolvent, *purely* by *Misfortunes* and *Disappointments*, they deserve *Favour* and *Compassion* rather than *Punishment*; and therefore they, and *they only* ought by Law to be discharged from their former Debts, on surrendering all they then have to their Creditors; especially, if they have then no probable View of getting any Estate, but what they shall afterwards acquire by  
their

their *Labour* and *Industry*. Not that I think they would thereby, *in Conscience*, be discharged from the Payment of those Creditors, who had no *Consideration* for the *Risque* they run, in giving Credit to them. Indeed, if the Creditors had a *Premium* for the Money they lent, or a greater Price than usual for the Goods they sold upon Trust, they thereby became a sort of *Adventurers*, and ought to take a Share in the Loss; and as such Affairs are generally very privately transacted, it is a very good Reason for the Law to leave the Payment of *all former Debts* to the *Conscience* of the *Debtor* only.

I now come to the Punishment inflicted by the *Law of England* upon all Insolvents *promiscuously*. Upon this I must observe, and I believe it will be readily granted me, that *immediate Death* is not so severe a Punishment, as that Death which is brought on by *many and long Tortures*. I believe it will likewise be granted, that *perpetual Imprisonment* in the Common Side of a Jail, without any other Subsistence but the Jail Allowance, must soon end in the Death of the Person subjected thereto. Let us but imagine a *poor unfortunate Wretch*, who has perhaps done all he could to satisfy his just Creditors; who has paid *honestly* to the *uttermost* Farthing of what he had in the World: Let us, I say, suppose such an one thrown  
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at last into Jail, without a Penny or Pennyworth to bless himself with. He must go to the Common Side; he has no Money to purchase a *better Apartment*; he has no Bed nor Bedding, but a *little Straw*; he has no Bread nor Drink, but a *small Loaf*, and a little *cold Water*; subject every Day to the *Insults and Cruelties of Jailors*, because he cannot *purchase their Civilities*; the few Cloaths he carried in upon his Back at last *quite worn out*; and thus, without Fire, without Cloaths, exposed in a *damp Room* to the Inclemencies of a cold Winter: How long can we suppose such a *Wretch* can live? How *Tormenting* must his Life be, while it lasts? Must not we then conclude, that such an Imprisonment is a *Death* brought on by *many and long Tortures*! And yet this is the *Tormenting Death* that the *honestest Bankrupt or Insolvent* may be exposed to by the Laws of *England*, which do not allow the most *cruel Murderer* to be tortured, if he submits to be tried by God and his Country.

This is the Punishment; let us now consider the Heinousness of the Crime for which this *terrible Punishment* is inflicted. The Crime is Insolvency, which I have already shewn to be *really criminal*, only in two Cases; and, in the *most criminal* of these two, this Punishment is stript of all its Terrors. For a *fraudulent Criminal*

nal Insolvent, who *Robs* and *Plunders* his Creditors, and carries that *Plunder* along with him to Jail, may live *at his Ease*; and *the more Criminal* he is, the *greater Spoils* he carries in to that *sacred Place*, the *more Liberty*, the *more Civility* he will certainly meet with, the *more Luxury*, and the *more Plenty* he may wallow in : As to the other Sort Criminal Insolvents, I mean those Fellows who are generally dignified by the Name of *Sharppers*, they generally belong to a *Gang*, and often Support one another ; but if one of them should be entirely *deserted* by his *Gang*, so as that the *legal Punishment* should fall upon him with its *whole Weight*, it must be look'd on as *too severe* ; for in the worst Light, we can look upon these Fellows only as *common Cheats* ; and tho' a Man should be actually indicted, try'd and convicted as a *common Cheat*, he cannot be *put to Death*, much less can he be put to a *lingering tormenting Death*, by any of our penal Laws.

If then this Punishment be too severe for a *Sharpper* or *common Cheat*, it must certainly be much *too severe* a Punishment for those Insolvencies, who, tho' culpable, are *no way Criminal* : But to inflict such a *terrible Punishment* upon a *poor unlucky Man*, who has become Insolvent by *unavoidable Misfortunes* or *Dis-*  
*appoint-*

*appointments*, or upon one who has been drawn into such by *too much Good Nature*, is surely to add *Affliction* to the *Afflicted*, and to subject an *innocent Man* to *Racks* and *Tortures* during Life, who deserves *Pity* and *Compassion* from the Publick, and from every Man he has to do with. To leave such a Man to be *coop'd up* in a *noisome Dungeon* for Life, at the Mercy of a Creditor, who may perhaps take that Opportunity to satisfy some *private Spite and Malice* most *unjustly* conceived against him, is a most *barbarous Custom*, a most *inhuman Law*.

To this it may be answered, That tho' perpetual Imprisonment be the Punishment inflicted by Law upon *every Insolvent*, yet the Creditors have it in their Power to release their Debtors, and free them from this Punishment whenever they please; and as the Creditors may be supposed to be the *best Judges* of the Causes of a Man's Insolvency, and whether he deserves Punishment or no; therefore it is left to them to *show Mercy* or not, as they think most just: But I have already shewn that this Punishment is too severe, even upon the *most Criminal* of those Insolvents upon whom it can be supposed to be any Punishment at all, and therefore in this Respect the Law is *unjust*. Moreover, is not this directly committing the Determination of a Case in Dispute to one of the

*Parties*



*Parties concerned*; which is contrary to the very *first Maxim* upon which all Societies are founded? And have not I already shewn, that it is inconsistent with the *fundamental Maxims* of Society, to leave it in the Power of any *private Man*, to *indulge* his *Revenge*, as far as he pleases, or to *grant Mercy* in any Case where the Publick is concerned as well as he.

It may be said further, That few or no Bankrupts are exposed to, or ever suffer any great *Torments* in Prison, because they generally have *something* of their own to subsist on, or they receive *Charities* from their Friends, or from other well-disposed Persons, whereby they may, and generally do, live pretty comfortably in Jail. This may be true in the main, but it diminishes neither the *Cruelty*, nor the *Inequality* of our Laws; and *both* these Methods of providing for Subsistence in Jail are great Grievances to the Publick: For, as to the first Case, it must from thence be granted, that, by our Laws, the Unfortunate are in a manner *compelled* to be Knaves; they are forced to withdraw from their Creditors as much of their Effects as they can, in order to maintain themselves in Jail. Is not this a great Injury to the Creditors? Does not this furnish an Excuse for all the *Robberies* we see daily committed by those who are thrown into Jail? Then, as to their subsisting

sisting by *Charity*, is it not ridiculous, that the Laws of any Country should be so modelled, as to *create* Objects of Charity? Is not every Object of Charity a *Charge* upon the People; and when the Poor's Rates are so high all over the Kingdom; when the People are already charged with so many other necessary Burdens, ought those Laws to stand in Force, which throw upon the People of this Kingdom every Year such Numbers of *new Objects* of Charity?

I think I have now made it evident, that our present Laws relating to Bankrupts and Insolvents are contrary to the *fundamental Maxims* of Society: But this is not all; they are likewise *inconsistent* with the Maxims of *True Polity*. It is very certain, that every Man who has not his Hands employed in daily Labour, nor his Head employed in the Government of the Society, or in contriving Labour for others, is an *useless Person* to the Society, and must consequently be a *Burden* upon the Society. Of these sort of *Drones* there will be abundance in every Society, let the Governours and Lawgivers do what they will to prevent it; but surely it must be an unpardonable Error in Politicks, to make any Laws, or to keep any Laws in Force, by which the Number of these *Drones* are necessarily *increased*; and as none, or very few of those who are con-

fin'd in Jail, can have their Hands employ-  
ed in daily Labour, or their Heads em-  
ployed about the Government of the So-  
ciety, or in contriving Labour for others,  
they must, of consequence, be a *Burden*  
upon the Society; therefore all prudent  
Methods ought to be taken to prevent the  
Society's being loaded with a great Num-  
ber of Prisoners.

It is, for this Reason, I have always  
thought, that Imprisonment ought never  
to be a Part of any Criminal's Punishment;  
and as often as I hear of its being inflicted,  
either by Law, or by the Sentence of a  
Judge, I look upon it as an Injury done  
to the Society. *Workhouses* or *Bridewells*  
may be set up, and Criminals may there  
be confined and kept to hard Labour, for  
the Benefit of themselves, as well as of  
the Society; but Prisons ought never to be  
employed, but for the safe Custody of  
those who are accused of some Crime or  
Offence, till it can be try'd whether they  
are guilty or not. Notwithstanding the  
Scantiness of the Jail Allowance, yet to  
me it appears in a ridiculous Light, *That*  
*because a Man has been a Criminal, there-*  
*fore he shall be maintain'd idly at the*  
*publick Expence.* This is what I think  
ought not, in any Case, to be practised;  
but, to make Imprisonment a Punishment  
for Insolvency, by which so many Hundreds  
are every Year rendered *idle*, and conse-  
quently



quently *burdensome* to the Society, is a *monstrous Error* in Politicks: And the more so, because many industrious Tradesmen, and ingenious Mechanicks, get, by that Means, into such a Habit of *Idleness* and *Sotting*, that they can never after apply themselves to *Labour* or *Industry*.

Another Consideration, as to Polity, is, that, in all Trading Nations, Numbers of People are undone by *new Projects*, and by what is commonly called, *Pushing a Trade*. As to *new Projects*, tho' they generally prove *unlucky* to the first Projector, yet they often prove *beneficial* to the Country, because others perceive the Rocks upon which the first Projector split, and from thence learn to steer safe, and to carry on the Project successfully, to the great Benefit of their Country, as well as themselves. As to what is called, *Pushing a Trade*, there are so many various Ways of it, that I shall not pretend to describe it: Every Man knows what is meant by it, and every Man knows, that large Sums of Money may often be laid out, or expended in that way *very reasonably*, and with a *probable* View of Success; but, as no Man is infallible, the best concerted, and the best conducted Scheme in this way may prove abortive; and by its proving so, the Undertaker may become Insolvent. We know how often, how easily Men are deceived by Hopes; especially those Men who are

of sanguine Constitutions, and therefore generally the most active, and the most useful Subjects. When a Man has laid out all his *own Estate* upon a *Project*, or in pursuing a *Scheme of Trade*, and has strong Hopes, that the laying out 500 *l.* or 1000 *l.* more will bring his *Project*, or his *Scheme* to bear; if he should (having at that time full Credit) run even a good deal more in Debt than he is at that time able to pay, and at last meet with a *Disappointment*, as to the Success of his *Project*, or his *Scheme of Trade*; surely he is not, upon that Account, to be deemed a *heinous Criminal*, and subjected to a more severe Punishment, than what is inflicted, by the Laws of his Country, upon any real Criminal. I will readily grant, that no Man ought to venture another Man's Money in any very *hazardous* Undertaking, without his own Consent: But as, in a Trading Country, those who become Insolvent, by pursuing *Projects*, or by any other Losses incident to Trade, ought to be gently dealt with; so even this of venturing another Man's Money upon a *reasonable Project*, or *Scheme of Trade*, ought not to be look'd on as a very gross Fault. It is what is incident to Human Nature; it is what is often practised by Merchants; and may redound very much to the Improvement of the Trade of any Country where it is practised; and therefore, an  
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Insolvency, occasioned by any *Misfortune* or *Disappointment* in this way, ought rather to be *pitied* than *punished* by the Publick.

Among other Maxims of Polity, which Lawgivers ought to lay down to themselves, with regard to Punishment, they ought to take all possible Care, that *real Infamy* shall attend *every* Punishment they inflict. By real Infamy, I mean what the Romans called *Infamia facti*, Infamy in Fact, and not that Infamy which they called, *Infamia juris*, or legal Infamy. By the first, they meant that sort of Infamy which blasted a Man's Character in the Opinion of all honest and good Men. By the latter, they meant that Infamy which was inflicted by Law, and which was, by Statute, or by the Sentence declared to be a Part of the Punishment. Real Infamy, or Infamy in Fact, has always been much more regarded, and more feared by Mankind, than legal Infamy. We find, that the *severest* Punishments are often *despised*, when they are not attended with real Infamy: Nay, change but the Scene; let the Punishment be attended with *Renown*, and we shall find the most *cruel Tortures* not only despised, but *gloried in*, and *sought diligently* after. It therefore behoves every Magistrate and Lawgiver, to take all Methods for making real Infamy a constant Attendant upon every Punish-

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ment he inflicts ; and, for this End, there is no Method more effectual, than the distinguishing as *minutely* as possible between the *several* Species of Crimes, and inflicting upon *each* a Punishment which shall appear, even in the *Eyes* of the *Publick*, that is, to the Generality of the People, to be *justly* and *duly proportioned* to the Crime for which it is inflicted. For, if two or three different sorts of Crimes, some of which are much more aggravating in their Circumstances than the other, are all confounded under one Name, and a Punishment *too severe*, for the *least heinous*, inflicted *promiscuously* upon all, the *most guilty* will hide their Heads under the Wings of the *most innocent*: Every one will pretend he is an Offender of the *least enormous* kind ; the good-natur'd World will believe him ; the Generality, of course, will begin to think the Punishment *too severe*, and then, instead of conceiving an *infamous Opinion* of the Sufferer, they will begin to *pity* his Case, the certain Effect of which will be, that the Punishment inflicted will not have near so much Success, with respect to that which is the *principal End* of all Punishment, *viz. The terrifying of others from being guilty of the like Offences for the future.*

Now, this is the very Case, at present, with respect to Insolvents. It is certain, there

there are *various Degrees* of Guilt in Insolvency. Some Insolvencies are *highly criminal*, some *barely criminal*; some *highly culpable*, some only *blameable*; and some not so much as blameable, but, on the contrary, such as ought to meet with *Pity* and *Compassion* from the whole World. Yet all these various Kinds of Insolvency are *confounded*, and all subjected to the same Punishment; and not only to the same Punishment, but to a Punishment *too rigorous* for the most Criminal, if the cruel Effects of it were not prevented by the *Fraud* of the Insolvent himself (which, by the bye, he is, in most Cases, allowed *full Scope* for by our Laws) or by the *Cbarities* of good-natur'd Men.

From thence flows the Reason, that those Criminals who *retire* into a Jail, and *withdraw* their Effects from their Creditors, do not meet with that *Infamy* and *Contempt* which most of them deserve. It is publicly known, that tho' they should honestly and fairly surrender all they have to their Creditors, they could not thereby free themselves from a Jail; they would by their Honesty only *increase* their Punishment, and expose themselves to the *Tortures* of dying by Degrees in a *noisome Dungeon*, with meer Hunger and Cold. In such Circumstances, can we expect, that the World will look upon a Man as *infamous*, who, even by *Fraud*,

provides against a Punishment he does not deserve ; a Punishment as cruel as any that was ever invented by Men ? So far otherwise, that it is generally look'd on as a *necessary* Piece of Prudence ; and if the Debtor has honestly and fairly offered to his Creditors, to make a *full Discovery* and Surrender of all his Effects, provided they would all join in giving him a *Discharge*, or a *Licence*, with respect to the *Liberty* of his Person, I really think he cannot be accused of acting a *dishonest Part*, if, upon their Refusal, he provides as well as he can for his Subsistence in Jail. But the great Misfortune is, that the *Obstinacy*, or rather *Malice* of any one Creditor may prevent the Effect of this honest Intention, and thereby the Debtor is reduced to the Necessity of spending *idly* in Jail, what he was willing to have *distributed* among his Creditors, what *all the other* Creditors perhaps were willing to have accepted. If this Custom, this Method of compelling a Man to become a fraudulent Insolvent, and the many Liberties and Civilities he may be allowed in Jail, provided he can pay for them, were fully explained to a Foreigner, I am persuaded he would conclude, that all the *Law-givers* in *England* had been *Fail-keepers* ; and that they had introduced *this Custom* or *Law*, in order to *compel* every *unfortunate* Man to come to Jail  
with



*with a good Fleece upon his Back, on purpose that they might have the Shearing of him.*

To this Method of confounding all sorts of Insolvents, *it* is also to be ascribed, that many, even of those Insolvents who are ready and willing to surrender to their Creditors all they have in the World, do not meet with that *Reproach* which *some of them* deserve; for, as the Common Cheat, the Idle and the Extravagant, the Negligent and the Unfortunate Insolvents are all confounded under one Name, and made liable to the same Punishment, it naturally brings them all upon the same Level, *viz.* That of the Unfortunate; which *every one* of them endeavours to put himself upon; and, as there is no Method settled by Law, for distinguishing the one from the other, *all those* who have *not suffered* by the Insolvency of any one of them, are ready to put the best Construction upon his Case, and to believe him to be really what he represents, *a most unfortunate Man*; while, on the other Hand, *those* that have *suffered* are always ready to believe the *worst* of the Man by whom they have suffered; and consequently, tho' they cannot subject him to *real Infamy*, yet, let his Case be never so plainly unfortunate, generally some of them are inclined to make him suffer the *most severe* Punishment they can by Law subject him to.

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The *confounding*, in this manner, the unfortunate with the criminal, the culpable, the blame-worthy, is likewise, in another Respect, a most impolitick Practice; because, in all Cases, where a Man is suspected or accused of any thing that is criminal, culpable, or blameable, the Law ought to provide some Method by which he may clear himself, *if innocent*, or by which he may be fully exposed and condemned, *if guilty*. The Want of such a Method as this will, in all Cases, but does more particularly, in the Case of Insolvency, *encourage* Men to be knavish, idle, and extravagant, and often *makes* the unfortunate become so. Those who are *naturally* prone to Knavery, Idleness, or Extravagance, put *no Restraint* upon their Inclinations, because, if they should become Insolvent or Bankrupt, they know they may easily make the World believe, that it is owing to Misfortunes and Disappointments: And those who have really been unfortunate, seeing no Method of *clearing* their *Characters* to the World, begin to spend idly and extravagantly, not only what they have left, but likewise whatever they can afterwards procure Credit for, by all the Arts *Knavery* can *invent*: Whereas, were there a proper Method appointed by Law, for examining into the Causes of a Man's Insolvency, it would be a *Check* upon the *Conduct* of every

every Man; and the honest and frugal, as soon as they found themselves so reduced by *real* Misfortunes and Disappointments, as to have no Hopes left of being able to pay their Debts, would directly, and with Pleasure, if it may be so called, lay their Case before the World, and submit willingly to a *fair Tryal*, by the Issue of which they would *clear* their *Characters* from *unjust Aspersions*; and they would be sure of meeting with that *Favour* and *Compassion* from the Generality of Mankind, which such Men deserve; tho' they can but *seldom* expect to meet with either from Creditors *exasperated* by *Disappointment*, and some of them perhaps *governed* by *private Piques* and *Resentments*.

Tho', from the general Observations I have made, the chief Defects of our present Laws relating to Bankrupts and Insolvents may pretty plainly appear; yet give me Leave to examine those Laws particularly, and to point out some of the principal Defects they labour under; which I shall do as briefly as I can.

First then, as to the Laws of Bankruptcy: There are none but *considerable Merchants* and *Dealers*, who can be subjected to them, or can reap any Benefit from them, which I take to be a very great Defect; for, as the Laws of Bankruptcy were first introduced in Favour of Creditors, and to enable them to recover  
their



their Debts, I can see no *good Reason*, or at least none subsists at this Time, why the Creditors of other Insolvents should not be *indulged* the *same Favour*; and I am very sure, there can, at present, be no *plausible Reason* assigned, why a considerable Merchant, or Dealer, by whose Trade the Country has perhaps been a great Gainer, tho' he himself has been a Loser, should be treated with *greater Rigour* than any other sort of Insolvent, especially in this Country, where the chief Part of our national Wealth and Power depends upon the industrious Merchant and Tradesman.

'Tis true, by some Laws afterwards made, the Bankrupts have got an Advantage, which other Insolvents have not; for, if Four Fifths of the Creditors, in Number and Value, agree to shew Mercy to him, by consenting to his Certificate, the other Fifth are *compelled* by Law to do the same; whereas the *most insignificant* Creditor of any other Insolvent may confine him during Life. But, as Farmers, Grasers, Mechanicks, and Petty Dealers, are liable to almost as many Misfortunes, and *more quickly* undone by such, why ought not they to have the same Indulgence? Nay, even Landed Gentlemen, and Persons in Posts and Employments, may become Insolvent by *Misfortunes* and *Disappointments*; and if they *actually* do so, they stand *more in need* of Compassion

passion than the Merchant, and certainly deserve it as much: At least, I am sure, they ought not, by Law, to be *compelled* to become *fraudulent Insolvents*, or to *starve in Jail*, which is the *hard Necessity* they are at present *drove to by Law*. Thus, if the Laws of Bankruptcy were introduced to favour the Creditors of considerable Merchants, there is no Reason, at least, now subsisting, why they should not be extended to the Creditors of every other Insolvent; and if those Laws were introduced in Favour of considerable Merchants, or have been since made favourable for them, there can be no Reason assigned, why they should not be extended to *all others* who may become Insolvent by *real Misfortunes* and *Disappointments*.

Another very great Defect in the Laws of Bankruptcy is, that, upon the Commission or Statute, there is no *Enquiry* made into, nor are the Bankrupts *obliged* to give *any Account* of the Causes from whence their Bankruptcy proceeded; which is a vast *Discouragement to Industry and Frugality*; because the frugal unfortunate Man has no way of justifying himself to the World: He is put upon the same Level with the most Extravagant, nay, with the Criminal, and common Cheat; both are subjected to the same Punishment, and both are entitled *by Law* to the same Benefits.

nefits. Nay, we often see, that a Man who never met with any great Misfortune in his Life, whose Bankruptcy is entirely owing to his Idleness, his Extravagance, or to what is called Good-fellowship, obtains a Certificate from his Creditors, with more Ease and Expedition, than a frugal penurious Man, whose Bankruptcy is entirely owing to unavoidable Misfortunes.

As I have before mentioned, it may be here said, that the Laws make no Distinction in this Case, because the enquiring into the Causes of the Bankruptcy, and the making of this Distinction, is entirely left to the Creditors, who are supposed to be the *best Judges*. But this is so far from being a Remedy for the former Defect, that it is in itself *another very great Defect*. It is leaving an Affair in Dispute to be determined by one of the *Parties concerned*: It is leaving it in the Power of a *private Man* to satisfy his *Revenge*, by inflicting a *severer Punishment* on one who is perhaps *no Criminal*, but an *Object of Compassion*; or to *indulge* his *Good-nature* or his *Vanity*, by granting Mercy to one who is *no Object of Compassion*, but a very *heinous Criminal*. In short, it is leaving it entirely in the Power of private Men, to grant or refuse Mercy in a Case where the Publick is very much concerned. And from what daily happens in this very Case, we may see how inconsistent it is with the pub-



publick Good, to grant any such Power to private Men : For, as I have said, a Bankrupt, who has become so, merely by Entertaining, Feasting, Haunting Taverns, and *keeping Company*, generally meets with *much less* Trouble in obtaining his Creditors Consent to his Certificate, than a Man who has lived *penuriously*, and is become a Bankrupt by *mere Misfortunes*. For the Truth of this I appeal to every Man who knows any thing of the Trading Part of the World; and the Reason is plain, because the former must necessarily have many *more Friends* and *Bottle Companions* to sollicite for him than the latter can be supposed to have : Yet, with respect to the Publick, the *latter* is the *only* real Object of Compassion, the former ought to meet with some Punishment or *Correction*, because, by his Example, especially by his *Impunity*, many may be *encouraged* to follow the same Course, which must be a very great Detriment to the Society; and therefore, if two such Bankrupts were to be tried by an *impartial Judge*, who, in inflicting Punishments, or granting Mercy, had no Regard to any thing but the *publick Good*, the former would certainly be *punished* in an exemplary Manner, and the latter would as certainly meet with all the *Indulgence* and *Mercy* he could desire.

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The only remaining Inconvenience attending the Laws of Bankruptcy, which I shall at present take Notice of, is the *great Expence* that is necessary in suing out and executing a Commission or Statute of Bankruptcy, which is so *excessive*, that, in small Bankruptcies, this very Expence would often make a *considerable Addition* to the Dividend afterwards made among the Creditors.

As to all other Insolvents, the only Regulation yet established by Law is, that which was lately made by the Statute *for Relief of Insolvent Debtors, with respect to the Imprisonment of their Persons*; which obliges the Creditor to discharge his Debtor, upon a Surrender of all he has, or otherwise to allow and pay to him *a Groat a Day* for his Subsistence in Jail. There were such Numbers of poor Creatures starving in Jail, when this Law was made, that it was become absolutely necessary to make some such Law; and it is as necessary to continue it, or to make some more effectual Law in its stead; but as it makes *no Distinction* between those who become Insolvent by Misfortunes, and those who become so by Idleness and Extravagance, I am afraid it will have a very bad Effect, both upon the *Morals* and the *Industry* of the Vulgar, especially Journeymen and Day Labourers, who seldom have any thing but the *Cloathes*  
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upon their *Backs*. So, that a Surrender of all they have can be no *Inconvenience*, much less a *Terror* to any of them. And; as they have been accustomed to a *hard way* of Living and Lodging, they may subsist *pretty comfortably* in the Common Side of a Jail upon a Groat a Day, together with what they may get by *Charity* or otherwise. But for those who have been bred up to a *better way* of Living, a Groat a Day is so *poor* an Allowance, that it is most *barbarous*, as well as *impolitick*, to leave it in the Power of a *revengeful* Creditor, to confine an unfortunate Man, who was never guilty of any Crime, to *perpetual* Imprisonment, upon such a *mean* Subsistence.

Another Defect in this Law is, that it is confined to those Debtors, who are not charged in Jail with above 100*l*. So that *all those* Insolvents who are charged with above that Sum, let their Case be *never so unfortunate*, are, by Law, to be punished with *perpetual* Imprisonment, without any *Mean* of Subsistence, but the Jail Allowance: This, considering the *Liberties* and *Conveniencies* that are allowed in Jail to Prisoners who can *pay* for such, must always be an almost *irresistible* Temptation for Men to *steal* and *secrete* as much as they can from their Creditors; and therefore can tend to nothing but the *Enriching* of *Failers*, and *Debauching* the *Morals* of Mankind.



Let me now touch a little upon that Custom of granting from time to time General Acts of Insolvency, for discharging all Prisoners for Debt *under a certain Sum*, upon their making a Surrender of their Estates to their Creditors. As our Laws stand at present, such Acts become indeed necessary from the Multitudes that happen from time to time to be confined for Debt in the several Jails of this Kingdom; but I could never yet find out why they should be restrained to Prisoners for Debt *under any certain Sum*; for surely, a Man who owes 1000 *l.* may be *as great* an Object of Compassion, as a Man who owes but 10 *l.* and if there is any Injustice done to the Creditor, by discharging his Debtor from Prison, upon a Surrender of all he has in the World, the Injustice is as great, in discharging a Debtor who owes but 10 *l.* as in discharging one who owes 1000 *l.* For, with respect to the Justice or Injustice of the Case, it is certain, that *Majus & Minus non variant Conclusionem*. A Highwayman that robs a Traveller of 10 *s.* is as much a Highwayman, and as great a Criminal, as he that robs a Traveller of 100 *l.* and if all other Circumstances were equal, there would be no more Injustice done, by pardoning the 100 *l.* Robber, than by pardoning him that took only the 10 *s.* The only Reason I could ever form to myself, for

for restraining these Acts to a *certain Sum*, is, that those who are in Prison for *large Sums*, have generally *more Money*, either of their own, or from their Friends, to lay out upon the *Purchase of good Usage* in Jail; and therefore it is more *profitable* for *Failers* to keep them *sub Ferula*, than to detain *poor Rogues* who cannot *purchase* any of their *Civilities*: And if I were not very well convinced, that no *Fail-keeper* had ever any *Hand*, or any *Influence* in the forming of such Acts, I should conclude, that some *mighty Fail-keeper*, or some *mighty Man*, who had a *Share* in the *Profits*, had made Interest to get these Acts *so confined*, for the Benefit of himself and Brethren, and in order to prevent their being *stript of the best and fattest of their Pigeons*.

I am sure, this Method of restraining the Laws that have been made for the Relief of Insolvents, cannot be owing to the Example of any People whose Laws we can be supposed to have any Regard for. The *Romans*, 'tis true, for some time after the Establishment of their Commonwealth, treated their Insolvent Debtors *almost as cruelly*, tho' not near *so impolitically* as we now treat our Insolvents. They made them the *actual Slaves* of the Creditors: But when Trade and Riches began to increase among them, by which greater Numbers of their People came to

be exposed to *inevitable Losses and Misfortunes*, they found it necessary to alter that Part of their Law, and all manner of Insolvents, *without any Restraint* as to the Sums they owed, were allowed to free themselves from Jail, by a *Cessio Bonorum*, a Surrender of all they had to their Creditors. *Ut ad miserabile cessionis bonorum homines veniant auxilium, & electio detur creditoribus, vel quinquennale spatium indulgere, vel bonorum accipere cessionem, salva eorum videlicet estimatione, omni corporali cruciatu semoto:* are the Words of one of their Laws. And, as it must be allowed, that the *Roman Law* was generally founded upon the *True Principles* of Justice and Equity, it must be presumed, that they thought there was no Injustice, in obliging the Creditors to accept of such a Surrender, in all Cases where nothing *highly* criminal or culpable could be objected against the Insolvent.

Then, as to *Trade and Credit*, I believe it will be allowed, that our Neighbours, the *Dutch*, have studied as much, and understand as well as any People, what may tend to the *Improvement* or *Discouragement* of either. There is no Country in the World where *Private Credit* more plentifully abounds. There never was a Country, where such an *Extensive Trade* was raised and kept up upon so *narrow a Foundation in Nature*; yet, in that Country,



try, they admit of this *Cessio Bonorum* in all Cases, without *Restraint* or *Limitation*, except some times, as to those Foreigners, who belong to Countries where no such thing is allowed; and even this Restraint has been by some of their most celebrated Lawyers judged inconsistent with that Indulgence which, by their Constitution, ought to be given to all Foreigners. From whence it must appear that the granting of such an *Indulgence* to all *unfortunate Debtors*, can no way *injure private Credit*, which is the Pretence *usually* made use of *against* granting any such Indulgence in this Country.

But this of restraining our Acts of Insolvency to Persons confined for Debts not exceeding *a certain Sum*, is not the only Defect in these Acts of Parliament. There has been another Defect in every one of them, which, I am afraid, has done *more Mischief*; and that is; their not having had any Method laid down for *distinguishing* between those who became Insolvent by *real* Misfortunes or Disappointments, and those who became so by *mere* Idleness, Extravagance, or Negligence. This has certainly given, and always must give, great *Encouragement* to Idleness, and to the spending of other People's Money in Luxury and Extravagance; because Man expects, that if he should be thrown into Jail, he will be at last discharged by  
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an Act of Insolvency, without any *Inquiry* into his Conduct, or into the Causes of his becoming Insolvent; from whence he hopes to meet with Compassion and Pity from the Generality of Mankind, who having no Proof to the contrary, may, *by a well formed Story*, be induced to believe that his Insolvency was *really* owing to *unavoidable* Misfortunes and Disappointments. This was likewise a Defect in the *Roman* Law, but in ours it is much less *excusable*; because we have, by the *excellent* and *superior* Spirit of our Laws, a Method *clearly* chalked out for making this *Distinction*, by subjecting every Insolvent's Case to be *Tried by an impartial Jury of his Neighbours and Countrymen*, who must know at least as much of his Conduct, as his Creditors can be supposed to know; and may improve and ascertain that Knowledge, by examining such Witnesses as shall be brought before them, either against, or in Favour of the Insolvent.

I shall conclude with taking some farther Notice of the Case of those Insolvents, or pretended Insolvents, who secrete and withdraw their Estates from their Creditors, and run into a Jail, with a formed Design to cheat all those they have had any thing to do with. That such a Practice should have been so long allowed, is to me *vastly surprizing!* especially when

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I consider, how many Instances every Year produces; how many Thousands have suffered, and are daily suffering by this *abominable Practice*, and how easy it is to prevent such a Practice for the future. But, as the Law now stands, it is certain, that any Man who is not subject to the Statutes against Bankrupts, may dispose of his Estate and Effects in such a manner, as to make it *impossible* for his Creditors to come at them either by *Law* or *Equity*: The honest Creditor has then no Remedy left, but to take hold of the Person; and as soon as he has done so, the *knavish Debtor* removes himself to the *King's Bench*, or *Fleet*, purchases the Liberty of the Rules, provides himself a fine Lodging, walks abroad daily and openly in Term Time, by means of *Day Rules*, and, by letting the Jailer go Snacks in the Plunder, lives at his Ease, *in defiance* of his Creditors, and *in despite* of the Laws of his Country. This *publick* and *avowed Fraud* may, I say, be committed, is committed every Day, and has been committed for many Years, without so much as an *Attempt* to provide a Remedy. I know, that a Judgment may, by Art and Management, by perjur'd Witnesses, or the like, be *unjustly* obtained against a Man; and, in such a Case, I will allow, that he may be excused, at least, in his own Conscience, for endeavouring to avoid the Payment of a Debt



Debt so *villainously* charged upon him; I will allow, that it would be hard to *compel* a Man to *surrender all he has*, for the Satisfaction of a Judgment so *unjustly* recovered; but I cannot admit, that such a *publick Nuisance* ought to be endured, for the sake of *a very few* private Men, who may perhaps be *real* Sufferers by its Removal.

I could have shewn a great many other Defects, and several other great Inconveniencies, which flow from the Laws now in Being, relating to Bankrupts and Insolvents; but, as my Design is only to give general Hints to those who are much more capable than I am, to draw up and form such a Law as may be sufficient for obviating all Inconveniencies, I believe what I have said may suffice: And, for the same Reason, I have not, in the following Draught of a Bill, been at the Pains to pick out, and chuse those Law Terms and Expressions which may be proper and necessary for enforcing what I propose. I believe I have expressed myself in such a manner, as to be understood; and if it should be thought proper to establish by a new Law any of those Remedies I have proposed, it will be easy for those who are conversant in the Laws of their Country, to put the Bill in such Terms as may render it clear and effectual.

F I N I S.

*W. Chas.*  
+ 1774.